

## Advisory on "Dealer Plates"

### Dealer Plate Policy Update

Updated  
April 2010

### Applicable to Motor Vehicle Dealers (including a Motorcycle Dealer), Manufacturer, Boat and Boat Trailer Dealers and Recreational Vehicle and Recreational Trailer Dealers

#### Purpose:

The purpose of this *Policy Update* is to remind dealers about the laws governing Dealer Plates and the Registrar's policies and procedures for Dealer Plates, the proper and improper use of Dealer Plates, personal use, and prohibitions against loaning, renting, selling, leasing or reassigning Dealer Plates once they are issued, and informing RMV when your address changes.

#### Issuance of Dealer Plates

The Registry of Motor Vehicles will only issue a "Dealer General Registration and General Registration Dealer Plate" (hereafter Dealer Plate) to an applicant who is licensed as a dealer by the city or town in which his or her business is located (if licensing is required), and only if the Registrar is satisfied that the provisions of Chapter 90 and other laws authorize such issuance. Mere receipt of a license pursuant to Chapter 140 of the General Laws to sell motor vehicles from a city or town, or opening a business as a recreational, boat or trailer dealer does not guarantee the issuance of Dealer Plates. The Registrar makes an independent assessment pursuant to Chapter 90 to determine eligibility for a General Registration and General Registration Dealer Plate. An initial site visit by the State Police will be made to determine compliance with legal requirements for the dealer's facility and to evaluate the appropriate number of Dealer Plates to be recommended for issuance. The Registrar determines the actual number of plates that will be issued, if any. Subsequent "spot checks" will be made from time to time by the State Police or RMV agents to determine if the dealer is complying with relevant laws and policies, including maintaining certain records (if required) and using the issued Dealer Plates properly.

#### Dedicated Dealer Facility Required:

An applicant for Dealer Plates must be engaged principally and substantially in the business of buying, selling or exchanging motor vehicles or trailers and maintain a facility dedicated to carrying on that business. The RMV will not knowingly issue or re-issue Dealer Plates to an applicant if his/her business is located within residential living quarters, whether or not the dealer or someone else actually resides there, or whether no one resides there. The facility must be used exclusively for the dealer's business. If a spot check determines that a dealer is operating at an inappropriate site, the Registrar will require removal to acceptable new premises within 120 days.

It is possible that a dealer may have premises either attached to or detached from a residential building that could be deemed suitable by the RMV. The State Police site inspection may help to determine suitability. The premises would have to be separate and distinct from any personal living quarters (e.g., it would have to be a secure facility with solid floor-to-ceiling walls, adequate office space to conduct the business, direct access from the outside of the building, not be used or shared with any other person or with any portion of personal living quarters and be licensed by the municipality at that location). The dealer must post and maintain reasonable business hours so that State and local police can conduct "spot checks" and "Used Vehicle Record Book" checks when required.

**Responsibility For And Use Of Dealer Plates:** Once the Dealer Plate is issued the responsibility rests with the dealer to ensure the plate is properly used and properly secured when not in use. If the Registrar determines that a Dealer Plate is used for an inappropriate purpose, or for an inappropriate period of time, or is made available for use by persons not authorized such use, or is unaccounted for, the Registrar may take appropriate action, which may include, suspension of one or more Dealer Plates, a reduction in the number of Dealer Plates assigned to the dealer, or the more permanent action of revoking the dealer's General Registration and all General Registration Dealer Plates. Revocation is for at least one year.

### **Proper Use by a Dealer:**

RMV Regulations at 540 CMR 18.04 (3)(a) 1 state:

“A dealer, manufacturer, dealer in boats and boat trailers or a dealer in recreational vehicles and recreational vehicle trailers, who has received a general registration number plate may operate or tow a motor vehicle or trailer which is owned by the dealer or manufacturer and is operated principally for demonstration or sale related purposes.”

- A dealer may also remove snow from the business property using a dealer-owned vehicle displaying the assigned Dealer Plate.
- Although not specifically spelled out in the Regulations, the Registrar has determined that a dealer can use a Dealer Plate on vehicles the dealer buys or sells and transports to or from auctions, to or from other dealers lots and during delivery to a buyer.
- A dealer can loan one of its motor vehicles or trailers with the Dealer Plate attached for the use of a customer for sale or demonstration purposes but, by law, it cannot do so for more than five (5) consecutive days. (Any attempt to extend the period of use by re-loaning the vehicle for an additional period may subject the dealer's action to review by the Registrar and result in disciplinary action against the dealer by the RMV). When a dealer has signed a Purchase and Sale Agreement for a vehicle, the buyer can no longer operate the vehicle with the Dealer Plate.

### **Personal Use Allowed for Motor Vehicle Dealer's Only:**

Chapter 60A, Section 1 (Excise tax statute) subjects a “motor vehicle dealer” to an excise tax of \$100 for each Dealer Plate issued to the dealer by the Registrar. That statute also allows for personal use of a motor vehicle from the dealer's inventory with a Dealer Plate attached but such personal use is limited to use by:

- the motor vehicle dealer,
- the spouse of the motor vehicle dealer,
- a co-owner of the dealership entity, (provided that the co-owner holds at least 40 per cent proprietary interest in the dealership);
- the spouse of a qualifying co-owner or,
- an “employee” of the motor vehicle dealer whose duties involve the sale of motor vehicles; provided that the employee renders at least 20 hours of service each week to the dealer.

That statute requires that whenever a dealer-owned motor vehicle is being operated while displaying the Dealer Plate, the vehicle must properly display all notices and stickers required by applicable law to be eligible for sale;

- if a “new” vehicle, it must display the MSRP (Monroney) sticker (required by Federal law) and the state-required yellow sticker discussing the “Lemon Law” for new vehicles.
- if a “used” vehicle, it must display the appropriate version of the “Buyer's Guide” (required by the Federal Trade Commission's “Used Car Rule”) and the state-required yellow “Used Car Warranty Law” sticker.

**Note:** Chapter 60A, Section 1 specifically limits personal use of Dealer Plates to the persons occupying the positions in the dealership as listed in the law. **A dealer is not authorized to add to the list in the statute.** The Registrar interprets the statute's use of the word “employee” in its literal sense and a dealer providing a Dealer Plate to an “employee” for his/her personal use must be prepared to provide documentation showing the individual's employment history (including timesheets and payroll records). A “contract worker” is not deemed to be an “employee.” (For additional info please see page 4).

**Note Also:** The authorization in Chapter 60A, Section 1 for “personal use” of a motor vehicle from inventory with the Dealer Plate attached is not applicable to a **Manufacturer**, a **Dealer in Boats and Boat Trailers** or a **Dealer in Recreational Vehicles and Recreational Trailers**.

**Prohibited Uses of Dealer Plates:**

The regulations prohibit a dealer from using an assigned Dealer Plate on a motor vehicle owned by the dealer as equipment utilized in the operation of the business. This includes:

- a courtesy bus
- a parts or service vehicle
- a tow truck or ramp truck
- a "loaner" vehicle provided to customers whose own vehicle is in for service. (Such vehicles must be separately registered, titled and insured).
- a rental vehicle available to customers of the dealer for any purpose. Such vehicles must be separately registered, titled and insured and the rental business must be a separate and distinct entity from the dealership.

**Loaning, Renting, Selling/Leasing or Re-assigning a Dealer Plate**

By law, all General Registrations and all General Registration Plates (including Dealer Plates and permits for temporary Dealer Plates) issued by the Registrar remain the property of the Registrar and are not transferrable. Any General Registration plate holder (including a Dealer) found responsible for **loaning, renting, selling/leasing** or **re-assigning** a plate that is issued by the Registrar shall be subject to action by the Registrar which may include the revocation of the General Registration and all Dealer Plates. Any attempt to loan, rent, sell, lease or re-assign a Dealer Plate issued by the Registrar is without legal effect and void and the Registrar can take appropriate action for the Dealer's attempt.

**Note:** This includes attempting to sell or rent a Dealer Plate on any Internet website.

If a Dealer Plate is attached to a vehicle not owned by the dealer, the vehicle is unregistered and uninsured. The vehicle itself is subject to being towed and its real owner can be cited for attaching plates (a criminal offense). Its operator can be cited for driving an unregistered vehicle. The Police may seize the plates for evidence and when reported to the RMV, the Registrar will determine whether the dealer (which includes his or her agent) knowingly provided the Dealer Plate to an unauthorized person or for an unauthorized vehicle and whether action against the dealer is warranted. If the Registrar determines that a dealer to whom Dealer Plates were assigned by the Registrar has wrongfully provided a plate to another, or allowed its use on an unauthorized vehicle, the Registrar may revoke the Dealer General Registration and all General Registration Dealer Plates.

**Return of All Dealer Plates Required On Sale or Termination of the Dealership**

The Registrar issues Dealer Plates to a specific applicant based upon that applicant's qualifications for Dealer Plates. The Dealer Plates do not become part of the dealership assets once issued and cannot be re-assigned to or used by a successor in interest to the dealership. If the dealership business is sold, ceases to operate or if any applicable license, or permit is suspended or revoked by the issuing authority, the dealer must return all issued Dealer Plates to the Registrar at the final close of business or prior to a takeover by a new owner, or when a Dealer's license or permit has been suspended or revoked. A dealer's failure to turn-in and account for all issued Dealer Plates may result in the Registrar refusing to issue any new General Registration of any type to that person in the future.

**Dealer Change of Address Notification:**

If a dealer moves to another address in a different city or town:

- The dealer will first need to contact the city or town, where the new address is located, for a Dealer's License.
- The dealer must fax the Name/Address [Change Request Form](#) to the RMV at 617-351-9399 with supporting documentation.
  - copy of the newly issued Dealer's License
  - proof of dealer's Federal Tax ID number
  - Certificate of Business (if applicable)
  - Corporation Documentation (if applicable)
- A site visit will be made to the new premises by the State Police Compliance Unit

If the dealer moves to a new address within the same town:

- The dealer must first contact the city or town for an amended Dealer's License.
- The dealer must fax the Name/Address [Change Request Form](#) to the RMV at 617-351-9399 with all supporting documentation.
  - copy of the newly issued Dealer's License
  - proof of dealer's Federal Tax ID number
  - Certificate of Business (if applicable)
  - Corporation Documentation (if applicable)
- A site visit will be made to the new premises by the State Police Compliance Unit

**Note:** To avoid non-compliance, a dealer should notify RMV in advance of the move, if possible, if not, within 30 days after relocation.

### **Personal Use of Dealer Plates by an "Independent Contractor"**

Can an "Independent Contractor" providing services to a motor vehicle dealer use a dealer-owned inventory vehicle displaying a Dealer Plate for personal use?

**Answer: No!** Massachusetts General Laws Chapter 60A, Section<sup>1</sup> 1 (M.G.L. c.60A, §1) is a taxation statute which assesses an excise tax on every *Section Five* General Registration Plate issued to a "motor vehicle dealer." The statute also authorizes "personal use" of inventory vehicles by persons who occupy specific positions in the dealership. Included is the dealership's owner (must own at least 40 %) and spouse and an "employee" of such dealer whose duties involve the sale of motor vehicles, "provided that such employee renders at least 20 hours of service each week to such dealer...." The Registrar interprets the statute's use of the word "employee" in its literal sense. A "motor vehicle" dealer who provides an inventory vehicle with a *Dealer Plate* for the "**personal use**" of a person who is claimed to be an "employee" of the Dealer must be prepared to provide documentation showing the individual's employment history with the Dealer (including vehicles sold, timesheets, payroll and tax records). The law does not authorize "personal use" for other dealership "employees" (such as "service" or "office" workers") nor is it available to a "non-motor vehicle dealer" or "manufacturer" who may, nonetheless, be authorized to display "*Dealer Plates*" on its owned-vehicles. An "independent contractor" is not deemed to be an "employee."<sup>2</sup> Based on the foregoing, it is the position of the RMV that if a dealer identifies a person providing services to the dealer as an "independent contractor" and allows that person to use a vehicle from inventory for **personal use**, the dealer is violating M.G.L. c. 60A, §1 and is misusing the dealer plate in violation of M.G.L. c.90, §5 and the Regulations at 540 CMR 18. The Registrar may take action to suspend or revoke the Dealer's General Registration and the General Registration Dealer Plates.

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<sup>1</sup> M.G.L. c.60A, §1 (paragraph 2) states: A motor vehicle dealer to whom a general distinguishing number or mark has been issued shall, for the privilege of such registration, pay to the collector of taxes for the city or town in which such dealership is licensed, a special excise in the amount of \$100.00 for each registration plate issued by the registrar of motor vehicles under such general distinguishing number or mark. Such motor vehicle dealer shall otherwise be exempt from the excise imposed by this section on any motor vehicle owned by such motor vehicle dealer, which motor vehicle may be operated by such dealer, the spouse of such dealer, a co-owner of such dealer or dealership entity, the spouse of such co-owner or an employee of such dealer whose duties involve the sale of motor vehicles at any time for any purpose, including personal use, provided that such employee renders at least 20 hours of service each week to such dealer and provided that such co-owner holds at least 40 per cent proprietary interest in such motor vehicle dealer or any such dealership entity; provided, however, that a motor vehicle which is operated under such general or distinguishing mark or number shall, at all times, display all notices and stickers required by applicable law to be eligible for sale.

<sup>2</sup> IRS Publication #1779 ("*Independent Contractor or Employee...*") reflecting federal tax law, states that an employer must withhold income tax and the "employee's" portion of social security and Medicare taxes. The employer is also responsible for

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paying Social Security, Medicare, and unemployment (FUTA) taxes on wages and must give an “employee” a Form W-2, *Wage and Tax Statement*, showing the amount of taxes withheld from his/her pay. A person who receives an IRS Form 1099 from a business is probably an “independent contractor” and not an “employee.” (A person who is not an “employee” and who is paid at least \$600 as an “independent contractor” must be given a Form 1099 by the business. An “independent contractor” is responsible for paying his/her own income tax and self-employment tax required by the *Self-Employment Contributions Act – SECA*. The business does not withhold taxes from an “independent contractor’s” pay and he/she may need to make estimated tax payments during the year to cover expected tax liabilities.) Note that “employers who misclassify workers as “independent contractors” can end up with substantial tax bills and can face penalties for failing to pay employment taxes and for failing to file required tax forms.